

THE WHITE HOUSE
WASHINGTON

March 19, 1973

MEMORANDUM FOR:

THEODORE L. ELIOT, JR.
EXECUTIVE SECRETARY
DEPARTMENT OF STATE

SUBJECT: Antarctic Political Asylum Procedures

With reference to State's memorandum of January 5, 1973 (S/S 7220247), the proposed procedures for handling requests for political asylum by foreign nationals in Antarctica have been reviewed and approved.



Brent Scowcroft
Brigadier General, U.S. Air Force

MEMORANDUM

NATIONAL SECURITY COUNCIL

74

ACTION

January 15, 1973

MEMORANDUM FOR MR. KISSINGER

FROM:

Helmut Sonnenfeldt

SUBJECT:

Antarctic Political Asylum Procedures

The interagency Antarctic Policy Group -- State, Defense and the National Science Foundation -- has requested State to prepare a separate instruction on asylum relating to Antarctica. This need arises because the United States does not recognize territorial claims in Antarctica. Accordingly, State's instructions of January 4, 1972, "General Policy for Dealing with Requests for Asylum by Foreign Nationals", do not apply precisely to possible political asylum requests at Antarctic stations and in the field. (Thus far there have been no such requests.)

In the memorandum at Tab B, State reviews the issue and attaches a proposed "Instruction on Handling Asylum Requests in Antarctica." The instruction, which follows the US' general policy guidelines on asylum requests, directs that no decision shall be made on a request for asylum without instructions from the Department of State. It then sets forth guidelines for granting temporary refuge, notification to State of asylum requests, and the information to be transmitted in the notification.

I think it is useful to cover this loophole in U.S. asylum policy, and the State instruction would appear to do all that is required. The memorandum for your signature at Tab A would advise State that the Antarctic instruction has been reviewed and approved.

RECOMMENDATION

That you sign the memorandum at Tab A.

Approve _____ Disapprove _____

Concurrence: Richard T. Kennedy
Michael A. Guhin



DEPARTMENT OF STATE

Washington, D.C. 20520

January 5, 1973

UNCLASSIFIEDMEMORANDUM FOR MR. HENRY A. KISSINGER
THE WHITE HOUSE

Subject: Procedures for Handling of Requests
for Political Asylum by Foreign
Nationals in Antarctica

Reference: Department of State memorandum of
January 4, 1972: "General Policy
for Dealing with Requests for
Asylum by Foreign Nationals"

A separate instruction on asylum relating to Antarctica has been prepared at the request of, and in consultation with, the Antarctic Policy Group (State, Defense, National Science Foundation). This was considered necessary as the U.S. does not recognize any territorial claim to Antarctica, which is neither U.S. territory nor under foreign jurisdiction. Thus, neither of the operative parts of the General Policy memorandum applies precisely. Part II applies within the U.S. or on board U.S. flag vessels or aircraft or on the high seas. Part III applies in foreign jurisdiction.

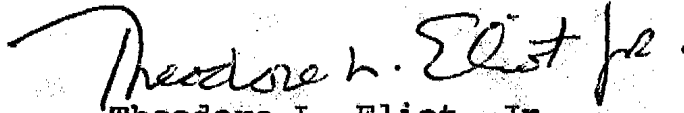
The instruction (Attachment 1) derives from guidelines set forth in the General Policy memorandum (Attachment 2). It will be provided to U.S. military commanding officers and civilian station leaders at the four U.S. permanent stations in Antarctica, to leaders of temporary field expeditions, and to commanding officers of U.S. Naval and Coast Guard vessels and U.S. Naval and Air Force aircraft. The Department plans to issue the instruction in the near future.

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- 2 -

Twelve of the States parties to the Antarctic Treaty work cooperatively in scientific research in Antarctica. There have been no asylum requests since the research work began in 1957.


Theodore L. Eliot, Jr.
Executive Secretary

Attachments:

1. "Instruction on Handling Asylum Requests in Antarctica."
2. "General Policy for Dealing with Requests for Asylum by Foreign Nationals", January 4, 1972

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DEPARTMENT OF STATE

Washington, D.C. 20520

Instruction on Handling Asylum Requests
in AntarcticaGENERAL

Antarctica, for purposes of this instruction, is the area south of 60° South Latitude, excluding any part of the high seas, but including all ice shelves. This instruction provides for specific implementation in Antarctica of the attached "General Policy for Dealing with Requests for Asylum by Foreign Nationals" dated January 4, 1972 (announced by State Department Press Release No. 11 of January 11, 1972).

I. ASYLUM

United States Government policy in Antarctica is to avoid either encouraging or discouraging individuals from seeking asylum or refuge at United States bases and installations, or aboard United States vessels or aircraft.

Principles

If asylum is requested at a United States base or installation, or of United States personnel aboard United States vessels or aircraft, in Antarctica, no decision shall be made on a request for asylum without instructions from the Department of State. Such instructions shall be sought as provided in Item III below. Pending instructions, the senior United States official present at the scene, where necessary, shall take appropriate measures to preserve the life and safety of the person in question. In deciding whether such action is necessary and what measures are appropriate, the senior official should follow the guidance in the first two paragraphs immediately below relating to temporary refuge.

- 2 -

II. GRANTING TEMPORARY REFUGE

Immediate temporary refuge may be granted to an individual who, claiming persecution, or the threat thereof, for reasons of race, religion, nationality, membership in a particular social group, or political opinion, requests asylum of the U.S. Government; however, the decision as to whether or not temporary refuge is in fact to be granted will rest with the senior U.S. representative present, and this decision must give due regard to U.S. asylum policy, existing circumstances, and the safety of U.S. personnel. In deciding whether to take a person on board an aircraft, account shall be taken of the vulnerability of aircraft to hijacking, damage and destruction.

To the extent circumstances permit, persons given temporary refuge should be afforded every reasonable care and protection. The measures which can prudently be utilized in providing this protection must be a matter for decision of the senior U.S. official present at the scene, taking into consideration U.S. liberal asylum policy, the safety of the American personnel and the established security procedures for the unit or installation concerned.

When such temporary refuge is granted, the Washington headquarters of the concerned agency and the Operations Center of the Department of State should be immediately notified (Telephone - Area Code 202 632-1512).

Protection shall be terminated when the period of active danger is ended, except that authority to do so shall be obtained from the Department of State. Where a U.S. installation in Antarctica is involved, such authority shall be obtained from the Department of State through the installation's Washington headquarters. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to Washington.

III. NOTIFICATION TO DEPARTMENT OF STATE OF ASYLUM REQUESTS

Upon receipt of a request for U.S. asylum made by any foreign national, agencies having their own rapid communica-

- 3 -

tions systems with direct contact with their headquarters in the U.S. shall notify those headquarters, with information copy to the Operations Center of the Department of State (Telephone - Area Code 202 632-1512) by IMMEDIATE precedence message.

IV. INFORMATION TO BE TRANSMITTED

With respect to requests for asylum or for temporary refuge (whether or not granted), the following information should be furnished when available but the initial report should not be delayed pending its development:

1. Name and nationality of the individual seeking asylum or refuge.
 2. Date, place of birth, and occupation.
 3. Description of any documentation in his possession.
 4. What foreign authorities are aware of his seeking asylum or refuge.
 5. Circumstances surrounding the request for asylum or refuge.
 6. Exact location. If aboard vessel or aircraft, ETA at next intended port or airport.
 7. Reason for claiming asylum or refuge.
 8. Description of any criminal charges known or alleged to be pending against the asylum or refuge seeker. Indicate also any piracy at sea, air piracy or hijacking background.
 9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.
 10. Immediate health circumstances.
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DEPARTMENT OF STATE

Washington, D.C. 20520

January 4, 1972

General Policy for Dealing with Requests for
Asylum by Foreign Nationals

PART ONE

POLICY

Both within the United States and abroad, foreign nationals who request asylum of the United States Government owing to persecution or fear of persecution should be given full opportunity to have their requests considered on their merits. The request of a person for asylum or temporary refuge shall not be arbitrarily or summarily refused by U.S. personnel. Because of the wide variety of circumstances which may be involved, each request must be dealt with on an individual basis, taking into account humanitarian principles, applicable laws and other factors.

In cases of such requests occurring within foreign jurisdiction, the ability of the United States Government to give assistance will vary with location and circumstances of the request.

U.S. OBJECTIVES

A basic objective of the U.S. is to promote institutional and individual freedom and humanitarian concern for the treatment of the individual.

Through the implementation of generous policies of asylum and assistance for political refugees, the United States provides leadership toward resolving refugee problems.

BACKGROUND

A primary consideration in U.S. asylum policy is the Protocol Relating to the Status of Refugees, to which the United States is a party. The principle of asylum inherent in this international treaty (and in the 1951 Refugee Convention whose substantive provisions are by reference incorporated in the Protocol) and its explicit prohibition

against the forcible return of refugees to conditions of persecution, have solidified these concepts further in international law. As a party to the Protocol, the United States has an international treaty obligation for its implementation within areas subject to jurisdiction of the United States.

United States participation in assistance programs for the relief of refugees outside United States jurisdiction and for their permanent resettlement in asylum or other countries helps resolve existing refugee problems. It also avoids extensive accumulation of refugees in asylum countries and promotes the willingness of the latter to maintain policies of asylum for other arriving refugees.

President Nixon has reemphasized the United States commitment to the provision of asylum for refugees and directed appropriate Departments and Agencies of the United States Government, under the coordination of the Department of State, to take steps to bring to every echelon of the United States Government which could possibly be involved with persons seeking asylum a sense of the depth and urgency of our commitment.

PART TWO

Handling Asylum Requests by Persons in the United States or in Other Areas Outside Any Foreign Jurisdiction

All U.S. Government personnel who may receive a request from a foreign national for asylum within territory under the jurisdiction of the United States, or aboard a U.S. vessel or aircraft in or over U.S. territorial waters or on or over the high seas, should become thoroughly familiar with procedures for the handling of such requests. Implementing instructions issued by Government agencies to establish these procedures should receive the widest dissemination among such personnel.

PROCEDURES

A. Upon receipt of a request for asylum from a foreign national or an indication that a request from a foreign national is imminent, U.S. Government agencies should immediately notify the Department Operations Officer at the Operations Center of the Department of State (Telephone area code 202, 632-1512). The Department Operations Officer will refer any request to the appropriate offices in the Department of State and will maintain contact with the U.S. agency involved until the designated action officer in the Department of State assumes charge of the case.

The following information should be forwarded to the Department Operations Officer at the Operations Center when available but the initial report must not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in his possession.
4. What foreign authorities are aware of his seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, ETA at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

Telephone notification to the Operations Center should be confirmed as soon as possible with an IMMEDIATE precedence telegram to the Department of State summarizing all available information.

B. Safe protective custody will be provided to the asylum seeker and, where indicated, appropriate law enforcement or security authorities will be brought in as early as

possible. Interim measures taken to assure safe custody may include the use of force against attempts at forcible repatriation where means of resistance are available, taking into account the safety of United States personnel and using no greater force than necessary to protect the individual. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to headquarters for instructions.

C. U.S. Government agencies should also immediately inform the nearest office of the U.S. Immigration and Naturalization Service (INS) of any request for asylum, furnish all details known, and arrange to transfer the case to INS as soon as feasible. Agencies should continue to follow any procedures already in effect between themselves and INS. For INS only: Where INS has received a direct request for asylum and has assumed jurisdiction over a routine case in which forcible repatriation or deportation is not indicated, INS may follow existing notification procedures in lieu of the special alerting procedure to the Department of State described above.

PART THREE

Handling Asylum Requests by Persons Within Foreign Jurisdiction

This instruction sets forth procedures for all U.S. Government agencies abroad in dealing with asylum requests at U.S. installations, vessels or aircraft in foreign jurisdictions.

I. GRANTING ASYLUM

While it is the policy of the U.S. not to grant asylum at its units or installations within the territorial jurisdiction of a foreign state, any requests for U.S. asylum should be reported in accordance with the procedures set forth herein.

II. GRANTING TEMPORARY REFUGE

Immediate temporary refuge for humanitarian reasons, however, may be granted (except to board aircraft because of their vulnerability to hijacking) in extreme or exceptional circumstances wherein the life or safety of a person is put in danger, such as pursuit by a mob.

When such temporary refuge is granted, the American Embassy or consular office having jurisdiction, the Washington headquarters of the concerned agency, and the Department of State should be immediately notified. Military units under direct Embassy jurisdiction will report through the Embassy, unless the senior diplomatic official determines otherwise.

To the extent circumstances permit, persons given temporary refuge should be afforded every reasonable care and protection. The measures which can prudently be utilized in providing this protection must be a matter for decision of the senior U.S. official present at the scene, taking into consideration the safety of American personnel and the established security procedures for the unit or installation concerned.

Protection shall be terminated when the period of active danger is ended, except that authority to do so shall be obtained from the Department of State. Where a military installation not under direct Embassy jurisdiction is involved, such authority shall be obtained from its Washington headquarters upon concurrence of the Department of State. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to Washington.

III. NOTIFICATION TO DEPARTMENT OF STATE OF ASYLUM REQUESTS

Upon receipt of a request for U.S. asylum made by any foreign national, U.S. personnel within foreign jurisdiction should notify immediately the nearest American diplomatic or consular office in the country in which the request is made. Embassies or Consulates will forward this information to the Department of State by an IMMEDIATE precedence telegram. Agencies having their own rapid communications systems with direct contact with their headquarters in the U.S. may notify those headquarters, with information copies to the nearest

Embassy or Consular office and the Department of State, by IMMEDIATE precedence message.

IV. INFORMATION TO BE TRANSMITTED

With respect to requests for temporary refuge (whether or not granted) or for asylum, the following information should be furnished when available but the initial report should not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in his possession.
4. What foreign authorities are aware of his seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, ETA at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

V. DIPLOMATIC AND CONSULAR ESTABLISHMENTS

A. Requests For Asylum*

Requests for asylum made at U.S. diplomatic and consular establishments will continue to be dealt with in accordance with the provisions of Volume 2, Section 225.2 of the Foreign Affairs Manual, except that, should temporary refuge be granted, the authority of the Department of State must be obtained before such refuge is terminated.

B. Routine Requests

Requests of third country nationals for asylum made to diplomatic and consular offices need not be reported immediately to the Department of State when all of the following conditions exist:

* SEE PAGE 8.

- (a) Adequate host government machinery is well established which, in the opinion of the Embassy, assures satisfactory protection of the asylum seeker's rights.
- (b) There is no evidence of danger of forcible repatriation.
- (c) Local authorities can be expected to assume responsibility for the asylum seeker.

C. Coordination with Host Country Authorities

Action with regard to third country nationals seeking asylum should normally be taken within the overall policy that the granting of asylum is the right and responsibility of the government of the country in whose territory the request is made. Unless the Embassy deems that there are cogent reasons for not doing so, these authorities should be informed by the Embassy as soon as practicable of the request for asylum.

Activities should also be coordinated by the Embassy with the representative of the United Nations High Commissioner for Refugees (UNHCR), where such a representative is resident and the Embassy deems it appropriate. The UNHCR is a valuable instrument for providing international protection and securing adequate legal and political status for refugees. In addition to providing guarantees against forcible repatriation, the UNHCR seeks to secure for refugees legal, political, economic and social rights within asylum countries.

D. Available U.S. Assistance

The U.S. is prepared in the cases of selected refugees to provide care and maintenance, and to assist in local settlement in the country of first asylum or in another country of resettlement, including the United States. Such assistance is normally provided through voluntary agencies under a contract with the Department of State. In cases where the Embassy or Consular Office has determined that U.S. assistance is warranted, it should telegraph the Department of State recommending the type and extent of initial aid and ultimate resettlement considered most suitable.

NOTE:

Since issuance of this guidance, reference to Volume 2, Section 225.2 of the Foreign Affairs Manual, is outdated. The guidance is in process of revision to substitute the following language under subsection A:

A. Requests for Asylum

"As a rule, a diplomatic or consular officer shall not extend asylum to persons outside of the officer's official or personal household. Refuge may be afforded to uninvited persons who are in danger of serious harm, as from mob violence, but only for the period during which active danger continues. With the concurrence of the Department, refuge shall be terminated on receipt of satisfactory assurances from the established national government that the refugee's personal safety is guaranteed against lawless or arbitrary actions and that the refugee will be accorded due process of law."